

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA J LEVELL
Claimant

CARROLL AREA NURSING SERVICE INC
Employer

APPEAL 20A-UI-07720-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 7, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits due to her being on a short term layoff. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2020. The claimant, Kayla J. Levell, participated personally and was represented by Attorney Stuart Higgins. The employer, Carroll Area Nursing Service Inc., participated through witness Kim Lambert and was represented by Attorney Stuart Cochrane. Claimant's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on March 7, 2018. She is still employed to date. She works as an LPN and provides in home medical care to clients. Claimant initially started as a part-time employee, then switched to full-time, then back to part-time until March 12, 2020, which was her last day physically worked on the job.

Her hours as a part-time employee fluctuated between 20 to 40 hours per week. She worked Monday through Friday and every other weekend. Her days of the week that she worked varied.

In March of 2020, both claimant and her children were ill, which required her to be off of work. As of March 16, 2020, the school that the claimant's minor children attended closed due to the COVID 19 pandemic and she did not have daycare for her children during her normal working

hours. She notified Ms. Lambert via text message that she did not have daycare available for her children. See Exhibit 1. Claimant remained without daycare for her children until May 6, 2020. See Exhibit 1.

The afternoon of May 6, 2020, the claimant notified Ms. Lambert that she was able to find childcare and could come back to work. See Exhibit 1. Ms. Lambert responded that she needed to check with Vickie about hours that were available. See Exhibit 2. On May 8, 2020, Ms. Lambert texted the claimant to see if she wanted to come back as PRN status. See Exhibit 1. Claimant texted that she was interested in PRN status because she was starting schooling full-time. See Exhibit 1. Claimant started full-time school at Des Moines Area Community College (DMACC) on May 26, 2020. Claimant is in school Monday through Thursday each week. Claimant notified Ms. Lambert that she was only available to work Friday, Saturday and Sundays due to her full-time school schedule. Claimant continues to be in school at DMACC full-time.

Claimant filed her initial claim for unemployment insurance benefits effective March 22, 2020. Claimant's base period wages consist of the following:

	4/2018	1/2019	2/2019	3/2019
Carroll Area Nursing Service Inc.	\$8,827	\$11,257	\$8,978	\$9,202

She has reported \$0.00 in wages, holiday pay, pension pay or vacation pay earned for each weekly-continued claim she has filed to date. Her weekly benefit amount is \$545.00. Claimant's administrative records establish that she has received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$11,990.00 from March 22, 2020 through August 22, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits of \$10,200.00 from March 29, 2020 through July 25, 2020. Claimant's administrative records establish that no application for Department Approved Training has been approved for the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Admin. Code r. 871-24.23(5) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Iowa Admin. Code r. 871—24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

Claimant has not worked or earned wages for each of the weeks in which she has filed her weekly-continued claims for benefits. As such, she is considered totally unemployed pursuant to Iowa Code § 96.19(38)a. Therefore, she must be able to and available for work pursuant to Iowa Code § 96.4(3). From March 22, 2020 through May 6, 2020, claimant was not available for work due to lack of child care pursuant to Iowa Admin. Code r. 871-24.23(8). Benefits are denied from March 22, 2020 through the benefit week-ending May 9, 2020 due to the claimant's lack of availability for work.

The afternoon of May 6, 2020, claimant notified the employer that she had childcare available but on May 8, 2020, the claimant then notified the employer that she was only available to work Fridays and weekends. She had originally been working throughout the week Monday through Friday and every other weekend. Her hours were now limited because she was attending school Monday through Thursday each week, which started on May 26, 2020.

Claimant accepted a PRN status (or as needed) effective May 8, 2020. Claimant accepted this status change because she knew that her availability to work part-time hours changed because she had been accepted to a full-time educational program at DMACC.

Effective the benefit week beginning May 24, 2020 to present, claimant was in school full-time and unavailable for work during the full-time hours in which her wage credits were earned. No department approved training or waiver of Iowa Code § 96.4(3) has been established.

While the claimant may have been available for work from May 10, 2020 through May 23, 2020 before she started her full-time schooling, she had switched to a PRN status. As a PRN, there is no guarantee that on-call work is available. As such, she cannot be considered totally unemployed for the two weeks prior to her starting her full-time schooling when on-call hours were not available. The nature of on-call work is that it will not regularly be available to a worker.

As of the benefit week beginning May 24, 2020 and continuing through present date, the claimant is not available for work due to her full-time schooling. Because she is not available to the same extent as earned in her base period (full-time work), she is not eligible for benefits.

Benefits are denied effective March 22, 2020 due to the claimant not being able to and available for work and not being unemployed within the meaning of the law. As the claimant has initially received benefits, the next issue in this case is whether the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa. The administrative law judge finds that she has.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$11,990.00 for the weeks between March 22, 2020 through August 22, 2020 pursuant to Iowa Code § 96.3(7) as the claimant was not able to and available for work, or, was not unemployed within the meaning of the law. Claimant must repay those benefits to the agency.

The next issue is whether the claimant was eligible for Federal Pandemic Unemployment Compensation ("FPUC") benefits and whether she was overpaid those benefits. The administrative law judge finds that she was not eligible for those benefits and is overpaid FPUC benefits.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment. -- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because claimant is disqualified from receiving regular unemployment insurance benefits for the period of time from March 22, 2020 through August 22, 2020, she is also disqualified from receiving the FPUC benefits she received when she received her regular unemployment insurance benefits. The administrative law judge concludes that claimant has been overpaid

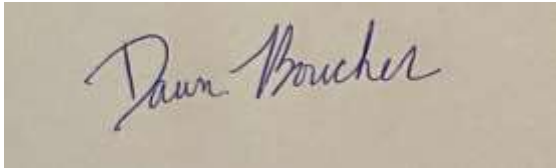
FPUC benefits in the gross amount of \$10,200.00 March 22, 2020 through August 22, 2020. Claimant must repay the FPUC benefits she received.

DECISION:

The July 7, 2020 (reference 01) decision is reversed. Claimant was not able to and available for work from March 22, 2020 through May 9, 2020 and from May 24, 2020 through August 22, 2020. Claimant was not totally unemployed within the meaning of the law, as she was working on-call from May 10, 2020 through May 23, 2020. Regular unemployment insurance benefits funded by the State of Iowa are denied effective March 22, 2020.

The claimant has been overpaid regular unemployment insurance benefits of \$11,990.00 for the weeks between March 22, 2020 through August 22, 2020. She is obligated to repay the agency those benefits she received.

The claimant has been overpaid FPUC benefits of \$10,200.00 from March 22, 2020 through August 22, 2020. She is required to repay the agency those benefits she received as well.



Dawn Boucher
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

db/sam

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.